

**Oroville Facilities Relicensing  
Federal Energy Regulatory Commission Project No. 2100  
Draft Summary of the Plenary Group Meeting  
July 29, 2003**

The Department of Water Resources hosted a meeting for the Plenary Group on July 29, 2003, in Oroville. A summary of the discussion, decisions made, and action items is provided below. This summary is not intended to be a transcript of the meeting, or to indicate agreement or disagreement with any of the items summarized, except where expressly stated. The intent is to present a summary for interested parties who could not attend the meeting. The following are attachments to this summary.

Attachment 1	Meeting Agenda
Attachment 2	Meeting Attendees
Attachment 3	Flip Chart Notes
Attachment 4	Process Update
Attachment 5	Meeting Abstracts
Attachment 6	Resource Actions (PM&E Proposals) Log
Attachment 7	Reports Delivered and Tentative Schedule for Delivery, April through September 2003

### **Welcome and Introductions**

Attendees were welcomed to the Plenary Group meeting and introduced themselves and their affiliations. The proposed meeting agenda and a list of meeting attendees are appended to this summary as Attachments 1 and 2, respectively. Meeting flip chart notes are included as Attachment 3.

The Facilitator informed participants that Patrick Porgans, representing JEM Farms, was participating via telephone and tape-recording the meeting. She also informed the group that three representatives from the Federal Energy Regulatory Commission were in attendance and would be discussing compliance later in the agenda. The participants reviewed the agenda and objectives were discussed.

### **Process Update**

#### *Where We Are in the Process*

Mark Andersen with DWR provided the group with an update on where we are in the relicensing process (see Attachment 4). He informed participants that potential resource actions have been submitted to DWR, with a number of them submitted using the Resource Action Identification Form. Mark also reviewed the timeline for completing the Draft Application/Preliminary Draft Environmental Assessment, the Draft Settlement Agreement, and Final Application. Next steps for the Plenary Group for the remainder of 2003 were discussed. The participants were informed of an all-day operations modeling workshop scheduled for August 12, 2003. During the workshop, DWR will explain the comparative analysis process used to measure benchmark scenario run results against the possible operational impacts of potential resource actions. Ken Kules representing the Metropolitan Water District of Southern California asked what topics would be discussed at the workshop. Rick Ramirez with DWR informed participants that the announcement and proposed agenda was distributed earlier in the day to the collaborative, both

electronically and hard copy, and would also be posted on the relicensing web site. He then circulated a copy of the announcement for participants to read.

Rick provided participants with an overview of the roadmap for processing a potential resource action. The participants were informed that PRAs have been submitted directly to DWR, as well as introduced within the various work groups. Each work group will provide a list of PRAs to the Plenary Group. The participants discussed the importance of the information requested on the Resource Action Identification Form to provide DWR and stakeholders with a better understanding of the PRA and to provide the PDEA team with adequate information to analyze effects. Rick stated that should the Plenary Group have any questions or need additional information from the work groups related to a specific PRA, it could be sent back to the work group for further technical review. The group was reminded that approximately 17 months remain to prepare and finalize the documents for submittal to FERC. DWR has begun preliminary work on the PDEA, which is driven by study plan results and discussions held at meetings to gain the necessary information to complete the PDEA/Draft Application.

Eric Theiss representing NOAA Fisheries requested clarification on the process for moving PRAs through the various task forces and work groups. He asked what level of approval is needed for work to begin and stated that NOAA believes studying fish passage on the Feather River system is critically important and should begin immediately. Eric would like assurance that the NOAA fish passage PRA is moving through the steps as quickly as possible and asked when studies would begin. Currently the Environmental Work Group Fisheries Task Force is discussing the fish passage PRA, and Rick suggested DWR and NOAA meet to gain a better understanding of the PRA. Eric agreed to discuss fish passage with DWR but requested such discussion not slow down the task force process.

Rick outlined the near-term work group roadmap and described four categories the work groups will use to group their PRAs. He clarified that categorization would be a work group task and that the Plenary Group would identify any additional work needed on PRAs. The Facilitator noted the need to get PRAs into the process as soon as possible, as long as enough information is available to guide the PDEA development team to begin analysis. She also described Category 4 as PRAs not recommended for further analysis but tracked for NEPA/CEQA. Some may be redundant or may be incorporated into others and those links should be identified. There will be information exchange between the PDEA development team and the work groups related to study data analysis, and the Plenary Group will have a clear picture through updates from each work group Resource Area Manager.

Roger Masuda representing Butte County commented that a process is needed to trigger requests for additional information; otherwise Category 3 PRAs could remain in limbo. He suggested Category 3 be broken down in subcategories – Category 3a would indicate that work group consensus was reached that additional information was needed and should be gathered, and Category 3b would indicate work group consensus was not reached on the need for additional information and the PRA was placed on hold. Ken Kules suggested defining Category 3b as “parking” an idea, a concept discussed earlier in the Plenary Group related to settlement discussions. Eric Theiss suggested a stakeholder should be free to object to the placement of a PRA, and the Plenary Group suggested such objection could be noted in the tracking matrix.

Patrick Porgans asked for clarification of the Plenary Group’s role in the process. The Facilitator reminded the participants that the process protocols direct the technical discussions of resource actions to take place at the work group level while policy discussions would occur at

the Plenary Group level. Rick Ramirez added that DWR is looking for an expression of support for PRAs from the Plenary Group collaborative participants. It is hoped that through technical discussions at the work group level, the collaborative participants can focus on PRAs that will do the most good. Patrick Porgans noted his appreciation for technical people making technical decisions, but added that he requires baseline and quantitative data also.

Michael Pierce, representing Butte County, asked if the work groups are tasked with gathering additional information. Rick stated that the work groups could make a recommendation to the Plenary Group for discussion and consideration. He added that if DWR makes a determination not to fund additional studies, they do so fully aware that the process will later be reviewed by FERC and they may be asked to justify their decision.

Rick reviewed the process for cross-resource evaluation of PRAs. He described ongoing discussions with DWR RAMs to identify potential conflicts and explained how the RAMs would take issues back to their work groups for consideration as appropriate. Work groups could convene cross-resource work group or task force meetings if necessary to discuss issues. He added that DWR would conduct cross-resource analysis for actions described in the PDEA.

#### *Process Protocol Task Force Update*

Sharif Ebrahim with the consulting team provided the group with an update on Process Protocol Task Force activities. He informed participants that the Settlement Process Protocols were discussed at the July 17 Task Force meeting and revised text was redistributed to Task Force participants on July 31. Sharif expects the Task Force to reach agreement on the changes by the next meeting, scheduled for August 13. Patrick Porgans said he has concerns with the incorporation of the protocols. The Facilitator responded that protocol language dealing with settlement would be recommended by the Task Force to the Plenary Group for approval and incorporation into the Process Protocols.

#### *Work Group Meeting Abstracts*

The Facilitator informed the group that abstracts covering work group meetings held since the last Plenary Group were included with the meeting agenda. Abstracts are provided as Attachment 5 to this summary. Participants were reminded that complete work group meeting summaries are posted on the relicensing web site.

#### **FERC Compliance Presentation**

Before beginning the presentation, James Fargo with FERC stated that since an amendment has been filed by DWR relating to the trails designation and the existing license for Project 2100, FERC representatives are unable to discuss the topic or answer any questions pertaining to the trails issue.

Jim told participants that the Compliance Division deals with post license and compliance issues after a project is licensed by FERC. Participants were informed that at any time during the licensing term, the licensee might request an amendment and this would be processed through the Compliance Division. Allegations of non-compliance with the license or Commission regulation can also be submitted to FERC. This could trigger a FERC investigation for finding of compliance or non-compliance.

Ken Kules asked for clarification on what types of items could be included in an ALP settlement agreement, such as locally-enforced actions. He asked if there are some items FERC would want to retain jurisdiction over and whether FERC would be watching the collaborative closely

during settlement discussions. Jon Cofrancesco with FERC stated that if the action were close to the project facilities, FERC would want control. He explained there are two categories: (1) items FERC will have jurisdiction over and enforce, and (2) items FERC considers non-jurisdictional. The FERC Order will indicate which items fall into which category.

Roger Masuda inquired about the role of FERC staff in regional offices, noting that environmental inspections used to be part of the Dam Safety Division. Roger wanted to know if the regional office still conducts inspections and is also now involved in compliance issues. Jon replied that regional office staff follows a detailed checklist of environmental and public safety issues focusing on dam safety, referring any item(s) of non-compliance to the Washington, DC office.

FERC clarified that the public is notified of any major amendment requests filed by a licensee by notices placed in local newspapers as well as notice placed in the Federal Register. Frequently, the public is invited to participate in a public meeting on the proposed amendment, as well.

Tom Berliner representing the State Water Contractors asked for the FERC staff to comment on their experience in the settlement process when stakeholders may be asking for somewhat controversial items. Jim Fargo said that the collaborative should work very hard to succeed and regard this as an opportunity to maintain local control over how issues get resolved. If the collaborative cannot resolve issues, FERC will step in and resolution will no longer be at the local level. He added that approximately 80-90% of ALPs reach settlement by, or soon after, the application submittal deadline.

Tom Berliner asked if FERC would be participating in or observing Plenary and Work Groups. He also asked about the typical amount of time necessary to reach a settlement. Jim Fargo replied that FERC would be in communication with DWR; however, the level of FERC attendance is a collaborative decision. Also, any FERC staff directly involved in the work groups would not be part of FERC's NEPA review. Jim noted it takes a high level of commitment, a large amount of time spent in meetings, and a willingness to negotiate in order for a collaborative to reach settlement. The collaborative may need to find time to meet more often and set priorities.

Valerie Fischer-Gates, a member the public, feels stakeholders must have an idea of the budget available for PRAs. FERC staff replied that such a viewpoint is inappropriate and inconsistent with how FERC considers project actions. FERC would not be evaluating the proposed application based on the budget but rather based on need and available resources.

Mark Andersen representing DWR asked if FERC has a simple test to determine if an issue is part of the existing license or on the table for relicense. Jim Fargo responded that if a licensee does something under a current license that would "predispose" the settlement outcome of a new license, then that amendment would probably be declined by FERC.

Michael Pierce representing Butte County asked how FERC handles environmental justice issues. Jon Cofrancesco replied that FERC has never had to apply environmental justice to a license compliance issue. Michael stated that environmental justice implies the licensee has an obligation to make public processes as accessible as possible. He added that DWR has done a good job in keeping the meetings in Oroville; however, the Lake Oroville Joint Powers Authority's input is crucial and they are out of funds. He reported that the JPA has frequently approached DWR and SWC for additional funding to no avail and the lack of funding is precluding Butte County from adequately participating. Jim Fargo told the participants that it is

up to the licensee to structure their stakeholder involvement process and from his perspective DWR has done an excellent job at providing for input into the process. He informed the participants that in comparison, Sacramento Municipal Utility District is not funding any stakeholder participation during relicensing for the Upper American River Project.

Cathy Hodges representing Equestrian Riders/Hikers asked how compliance complaints submitted in writing are handled by FERC. Jon replied that there are two categories: (1) an allegation of non-compliance, or (2) a formal complaint. He said allegations of non-compliance are investigated by the Compliance Division while formal complaints are filed in a special format and handled by FERC's general counsel.

### **Actions Items – May 20, 2003 Plenary Group Meeting**

The Facilitator reviewed the status of the actions items from the May 20, 2003 Plenary Group meeting.

**Action Item #P127:** Send e-mail to those requesting notification of meeting summary availability when meeting summaries are posted on the DWR relicensing web site. A few hard copies of the preceding Plenary Group meeting summary will be available at each Plenary Group meeting.

**Responsible:** DWR

**Status:** Participants were informed that anyone interested could obtain a hard copy of the summary for the May 20, 2003 Plenary Group meeting from the Facilitator. (Requests came from Eric Theiss with NOAA and Wade Hough representing ORAC.)

**Action Item #P128:** Upon meeting cancellation, a notice will be sent as soon as possible to the distribution list and meeting information posted on the relicensing web site will be kept as current as possible. Ron Davis will be called.

**Responsible:** DWR/Facilitator

**Status:** On-going

**Action Item #P129:** Review draft roster and provide Facilitator with any revisions including name of Ultimate Decision Maker.

**Responsible:** Participants

**Status:** The Facilitator informed the group that many participants have not responded. She added that information should be submitted to her via e-mail or verbal notification. The roster should be available for distribution by the next Plenary Group meeting. Similar rosters are being developed within each work group.

**Action Item #P130:** Contact Patrick Porgans to determine if there are any outstanding issues.

**Responsible:** Facilitator

**Status:** The Facilitator left a couple of messages for Patrick, but never spoke to him directly. Patrick feels issues still exist that have not been addressed such as the cumulative impact analysis issue and the level of meaningful stakeholder input and ALP confidence. Michael Pierce said he shares the same concern regarding meaningful input from local participants (i.e., inadequate funding for the JPA), as well as Patrick's concern on cumulative impacts. Wade Hough representing ORAC and Butte Sailing Club stated his organizations are not funded but both groups have submitted over 26 PRAs. Cathy Hodges added that her specific concerns include the lack of baseline studies of trails prior to the DPR decision to designate them all as multi-use and actions taken by agencies outside the collaborative.

The Facilitator restated the purpose of Action Item #P130 and asked the group to contemplate the amount of time necessary to work through the issues outlined. She also reminded the participants of the amount of time already spent on this issue. She asked to speak with Patrick off-line to identify possible solutions and Eric Theiss and Rick Ramirez offered to participate in the off-line discussion as well.

Roger Masuda feels no more collaborative time should be spent on issues related to the existing license but such issues should be taken directly to Rick Ramirez or Ward Tabor.

Rick Ramirez reminded the group of the advice given by Jim Fargo to avoid falling into a trap of discussing issues that have been discussed before. There is more work ahead that the collaborative needs to allocate time to and Rick suggested the Plenary Group choose its agenda items carefully and decide collectively how they want to spend their time.

**Action Item #P131:** Confirm distribution of Information Sheet to assist in development of Resource Action Identification Forms.

**Responsible:** Facilitator

**Status:** The Information Sheet was distributed to a broad collaborative list but the Facilitator agreed to provide additional hard copies to anyone who requested it. Wade Hough, Michael Pierce, Jon Ebeling, Patrick Porgans, Cathy Hodges, and Tom Berliner requested copies.

**Action Item #P132:** Provide list of submitted Resource Action Identification Forms.

**Responsible:** DWR/Consulting Team

**Status:** List is on this meeting's agenda (see discussion below).

Bob Sharkey with Feather River Recreation and Parks District notified the participants that the Environmental Impact Report for Riverbend Park has been completed and copies are available from Bob on request. The EIR is currently being mailed to their distribution list and will be posted on their web site, <http://www.frrpd.com>.

### **Preliminary List of Potential Resource Actions**

Mark Andersen distributed the Resource Actions (PM&E Proposals) Log to the group (see Attachment 6) and explained that the list was arranged by work group area and contains all PRAs received by DWR (Rick Ramirez or relicensing staff) via U.S. mail or e-mail on Resource Action Identification Forms as of July 29, 2003. Mark reminded the participants that there are many PRAs under development in work groups that are not reflected in the log, which will be constantly changing as new PRAs are submitted. He added that DWR would consider posting it on the relicensing web site in the future.

The Facilitator informed the participants that each of the work groups started compiling their list of PRAs by first reviewing the issue tracker. The work groups have been discussing actions, refining, and then prioritizing them to identify those most important to the work group. In some instances, task forces have been providing specific technical input to further develop information. The goal is to have the PRAs developed and refined to the extent possible at the work group level.

Roger Masuda asked what action should be taken if the author of a PRA disagrees with the routing of the PRA to a particular work group. The Facilitator suggested the author contact the

RAM for the work group in question to discuss where the PRA would best be considered. She added that there are probably some PRAs that need to be considered by more than one work group and it would be helpful for individuals to provide their input when submitting PRAs.

Roger asked if DWR was going to produce a master-tracking list that would allow participants to track PRAs back to their origins. The Facilitator pointed out that work groups are condensing their lists to remove redundant actions and incorporate some into others so when that effort is complete, a consolidated list could be prepared. Mark Andersen reminded Roger that the purpose of this log is to track PRAs received to date. Wade Hough asked what would happen to an issue if no one submitted an associated PRA. Mark replied that there are potential resource actions moving forward that do not have a completed form and in some instances, DWR or the consulting team will prepare a form to address an issue. Rick Ramirez suggested that those issues with an advocate will likely have more focused analysis than those without.

Eric Theiss noted that the numbers contained in the log are different from other tracking numbers and asked when the various matrices from the work groups would be consolidated. Mark indicated the work groups would begin bringing PRAs to the Plenary Group in September so a list could begin at that time. Rick Ramirez and Terry Mills with DWR will make sure the Environmental Work Group list captures all NOAA's PRAs. Roger Masuda strongly suggested that the Recreation and Socioeconomics Work Group meetings be extended beyond the current 4-hour monthly schedule to adequately discuss the 200+ PRAs expected in that work group. Doug Rischbieter, DWR's Recreation and Socioeconomic Work Group RAM, agreed that the work group schedule would be adjusted if the work group agrees additional time is needed.

### **Update on Deliverables from Studies**

The Facilitator reminded the group that April 2003 was the last time participants received an update on study plan deliverables. She distributed 'Reports Delivered and Tentative Schedule for Delivery, April 2003 thru September 2003' (see Attachment 7) and explained that this handout is an information document outlining what has been delivered and providing a preview of what will be available between August and September 2003. The Facilitator agreed to send a hard copy of the document to Jon Ebeling, representing Butte County. Mark Andersen informed the participants that deliverables listed from April through July 2003 have been posted on the relicensing web site.

### **Next Steps**

The Facilitator summarized activities for August and September 2003 and the participants discussed the need for an August meeting. The Process Protocol Task Force will have draft language and guidelines available for the September meeting. Tom Berliner asked why the Task Force could not finalize the Process Protocols in August. Sharif noted that the Task Force meeting was scheduled for August 13 and there would not be enough time to prepare edits and distribute to Plenary Group participants in advance of an August Plenary Group meeting. Tom would like to bring the Process Protocols to a close and the group agreed that the Task Force should finalize the protocols at their next meeting independent of an August Plenary Group meeting. The Plenary Group agreed to cancel the August Plenary Group meeting and to next meet in September.

Eric Theiss expressed concern that the timing of the next Plenary Group meeting would impact the ability to move PRAs along and initiate studies if necessary. He asked for longer meetings to allow for the discussion of additional items and suggested 1 p.m. to 9 p.m. Sonny Brandt

representing the JPA said he would prefer meetings to take place at the end of the business days because it is difficult for him and other stakeholders to attend earlier meeting times. The Facilitator confirmed that 4 p.m. to 8 p.m. was agreeable to the participants and a meeting could be extended to 10 p.m. if the agenda warrants. Eric reiterated his desire that plenty of time be allowed for questions.

The participants agreed on the following Plenary Group meeting date/time:

Date: September 23, 2003  
Time: 4 p.m. to 8 p.m. (may extend to 10 p.m.)  
Location: To be determined

Mark Andersen reminded participants of the August 12 Operations Modeling Workshop and encouraged everyone to attend.

### **Action Items**

The following action items identified by the Plenary Group include a description of the action, the participant responsible for the action, and the due date.

**Action Item #133:** DWR and NOAA discuss fish passage PRA.  
**Responsible:** Rick Ramirez/Eric Theiss  
**Due:** September 23, 2003

**Action Item #134:** Off-line discussion (brainstorming) to clarify remaining issues and suggest solutions.  
**Responsible:** Rick Ramirez/Facilitator/Patrick Porgans/Eric Theiss/Cathy Hodges  
**Due:** September 23, 2003

**Action Item #135:** Consider posting a log of PRAs on the relicensing web site.  
**Responsible:** DWR  
**Due:** September 23, 2003

**Action Item #136:** Mail Information Sheet to Wade Hough, Michael Pierce, Jon Ebeling, Patrick Porgans, Cathy Hodges, and Tom Berliner.  
**Responsible:** Facilitator  
**Due:** September 23, 2003

**Action Item #137:** Mail a copy of the updated list of deliverables (Attachment 7) to Jon Ebeling.  
**Responsible:** DWR/Facilitator  
**Due:** September 23, 2003